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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,228	12/08/1999	GARY K. MICHELSON	101.0084-00000	7453

22882 7590 01/09/2002

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 01/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/457,228

Applicant(s)

Examiner

Bruce Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 7, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-120 and 131-202 is/are pending in the application.
- 4a) Of the above, claim(s) 1-56, 109-113, 131-145, 201, and 202 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57-108, 114-120, and 146-200 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Nov 7, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5, 9
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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Election/Restriction

1. Applicant's election of Group 1 and Species 4 in Paper No. 11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-56, 109-113, 131-145, 201-202 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species/invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

The following was taken from the Election of Species restriction requirement, paper No. 8;

“applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added or the response will be considered non-responsive.”

The Examiner is unclear if all the claims indicated by applicant actually read on the elected embodiment. For example, claim 104 claiming “a cap” which is not shown in any figures. Please recheck all claims.

Drawings

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11/7/01 have been approved by the Examiner.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 57-108, 114-120, 146-200 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Paul et al (6,258,125).

Paul et al teaches a spinal implant comprising bone engaging structures that can be pyramid-shaped as shown in figures 4-7, for example. The upper and lower surfaces of the implant are curved in a side view and are angled relative to each other. Due to said curved upper and lower surfaces, some of the engaging structures have a forward facing facet that is longer than a rearward facing facet; and said rearward facing facet has a steeper slope. Note that different rows and/or columns, etc., can be considered different plurality of engaging structures. Further note, figures 9-11 which show the structures can be angled; it is the Examiner's position that figures 9 and 10A show an angled pyramid-shape.

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In the alternative, Paul et al teaches a pyramid-shape or four-facet engaging structure, it would be obvious to one having ordinary skill in the art to substituted all or some of the four-facet structures of Paul et al with known structures having greater than four facets, as taught by Suddaby (6174334), or a bone engaging structure that has less than four facets, as taught by Willert et al (4,944,763) or Nishijima et al (5,899,941) for their desired characteristics such anchoring or ease of manufacturing, etc.

Many of applicant's dependent claims claim a wide range of possibilities, for example, an angle can be less than 90 degrees, equal to 90 degrees, greater than 90 degrees, lacking any criticality in the specification, the use these varying ranges in lieu of those used in the references solves no stated problem and would have been an obvious matter of design choice within the skill of the art.

Additionally, many of the dependent claims claim elements/materials/shapes/etc. which are all well known in the art would have been obvious to one having ordinary skill.

Any inquiry concerning this communication should be directed to Bruce Snow at (703) 308-3255. Should the examiner not be present, Applicant may call the Examiner's Supervisor Corrine McDermott at (703) 308-2111.

B.E. Snow
January 4, 2002



Bruce E. Snow
Primary Examiner
Group 3700